

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

AMBER G.,	:	
	:	
Plaintiff,	:	Case No. 3:23-cv-41
	:	
v.	:	Judge Thomas M. Rose
	:	
COMMISSIONER OF THE SOCIAL	:	Magistrate Judge Chelsey M. Vascura
SECURITY ADMINISTRATION,	:	
	:	
Defendant.	:	

**ENTRY AND ORDER OVERRULING PLAINTIFF’S OBJECTIONS TO THE
REPORT AND RECOMMENDATION (DOC. NO. 12); ADOPTING, IN FULL,
THE REPORT AND RECOMMENDATION (DOC. NO. 11); AND,
TERMINATING THIS CASE ON THE COURT’S DOCKET**

This Social Security disability benefits appeal is before the Court on Plaintiff’s Objections to the Report and Recommendation (“Objections”) (Doc. No. 12) filed by Plaintiff Amber G. (“Plaintiff”) to Magistrate Judge Chelsey M. Vascura’s Report and Recommendation (the “Report”) (Doc. No. 11). Magistrate Judge Vascura explained in the Report that, Plaintiff’s initial applications for Disability Insurance Benefits and Supplemental Security Income (“Benefits”) were denied. (Doc. No. 12 at PageID 5420.) On reconsideration, the Administrative Law Judge (“ALJ”) held a hearing and again denied Plaintiff’s applications. (*Id.*) The Appeals Council subsequently denied review and Plaintiff brought this action. (*Id.*)

In the Report, Magistrate Judge Vascura recommended that Plaintiff’s Statement of Errors (Doc. No. 7) be overruled and the Commissioner’s decision be affirmed. (Doc. No. 11.) Plaintiff filed Objections (Doc. No. 12) to the Report, and Defendant filed a response to Plaintiff’s Objections. (Doc. No. 13.) Accordingly, this matter is ripe for review and decision.

If a party objects within the allotted time to a United States magistrate judge's report and recommendation, then the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* The Court "may also receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.* The Court's "review of the ALJ's decision is limited to whether the ALJ applied the correct legal standards and whether the findings of the ALJ are supported by substantial evidence." *Blakley v. Comm'r of Soc. Sec.*, 581 F.3d 399, 406 (6th Cir. 2009).

Plaintiff lodges only one objection to the report.¹ (Doc. No. 12 at PageID 5446-5447.) Namely, Plaintiff contends the Report incorrectly found that the ALJ in her case gave her applications for Benefits a "fresh look" as required by *Earley v. Comm'r of Soc. Sec.*, 893 F.3d 929 (6th Cir. 2018). (*Id.*)

The Court has made a *de novo* review of the record in this case regarding whether the ALJ afforded Plaintiff's application a "fresh look." 28 U.S.C. § 636(b)(1). The Court acknowledges that courts throughout the 6th Circuit have expressed differing views on this issue. However, as Magistrate Judge Vascura correctly indicates, *Early's* "fresh look" standard is rooted in the principal of fairness to the applicant. *Ferrel v. Berryhill*, No 1:16-CV-00050, 2019 U.S. Dist. LEXIS 79390, 2019 WL 2077501, *5 (E.D. Tenn. May 10, 2019). Moreover, the Court agrees with Magistrate Judge Vascura's determination that Plaintiff's application for Benefits effectively

¹ Plaintiff has made no objection regarding Magistrate Judge Vascura's determination that the ALJ did not err in weighing the opinions of Plaintiff's named medical professionals. Therefore, the Court adopts this determination without objection.

received a “fresh look”; that the ALJ’s decision in Plaintiff’s case was comprehensive and unencumbered by previous analyses.

Therefore, Plaintiff’s Objections to the Report and Recommendation (Doc. No. 12) are **OVERRULED**. The Court **ACCEPTS** the findings and recommendations made by the magistrate judge, **ADOPTS** the Report (Doc. No. 11), and rules as follows:

1. The Commissioner’s decision is **AFFIRMED**; and
2. The Clerk is directed to **TERMINATE** this case on the Court’s docket.

DONE and **ORDERED** in Dayton, Ohio, this Friday, September 15, 2023.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE